

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DS, an infant by and through her  
Parent and Natural Guardian CS  
and CS individually and on her own behalf,

Plaintiffs,

v.

ROCHESTER CITY SCHOOL DISTRICT,  
et al.,

Defendants.

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**DECISION AND ORDER**

6:19-CV-06528-EAW-MJP

On May 11, 2023, United States Magistrate Judge Mark W. Pedersen, to whom this case was referred pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) (Dkt. 14), issued a Report and Recommendation and Decision and Order (Dkt. 113) addressing Plaintiffs' motion for leave to amend the complaint filed on December 2, 2022 (Dkt. 93). While Judge Pedersen largely granted Plaintiffs' request, he issued a recommendation that the undersigned dismiss Plaintiffs' claims pursuant to 42 U.S.C. § 1983 against individual defendants in their official capacities and that the undersigned also dismiss the Equal Protection claim and Due Process claim asserted against proposed defendant Kwame Donko-Hanson.<sup>1</sup>

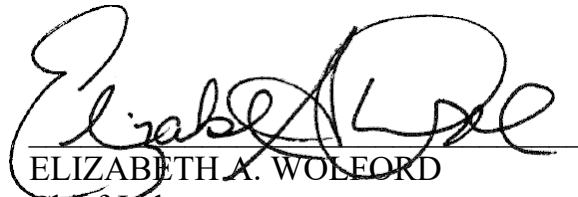
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<sup>1</sup> Technically, the claims that Judge Pedersen recommended for dismissal were not asserted but rather they were proposed claims in a proposed amended complaint. (*See* Dkt. 93-3). Therefore, it would be more appropriate to characterize the recommendation as one for denying the motion for leave to amend as opposed to dismissing claims that have not yet been asserted. However, in either case, it is appropriate for the magistrate judge to make a recommendation to the district judge. *See, e.g., Briggs v. Cnty. of Monroe*, 215 F. Supp. 3d 213, 215 (W.D.N.Y. 2016) (recommendation to deny leave to amend pleading as futile is reviewed *de novo*).

Pursuant to 28 U.S.C. § 636(b)(1), the parties had 14 days to file objections to the Report and Recommendation. No objections were filed. The Court is not required to review *de novo* those portions of a report and recommendation to which objections were not filed. *See Mario v. P&C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure [to timely] object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”).

Notwithstanding the lack of objections, the Court has conducted a careful review of the Report and Recommendation, as well as the prior proceedings in the case, and finds no reason to reject or modify the Report and Recommendation of Magistrate Judge Pedersen. Therefore, the Court accepts and adopts the Report and Recommendation. (Dkt. 113). For the reasons set forth in the Report and Recommendation, the Court denies Plaintiffs’ request to amend the complaint to assert official capacity claims against the individual defendants pursuant to § 1983 and to assert Equal Protection and Due Process claims against Kwame Donko-Hanson.

SO ORDERED.

  
ELIZABETH A. WOLEORD  
Chief Judge  
United States District Court

Dated: June 30, 2023  
Rochester, New York